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PTO/SB/29 (10-00)

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CONTINUED PROSECUTION APPLICATION (CPA) REQUEST TRANSMITTAL

Submit an original, and a duplicate for fee processing.
(Only for Continuation or Divisional applications under 37 CFR 1.53(d))

05-24-03
CHECK BOX, if applicable:
 DUPLICATE

Address to: Box CPA Assistant Commissioner for Patents Washington, DC 20231	Attorney Docket No.	88265-305
	First Named Inventor	J. BAENSCH et al.
	Examiner Name	R. Madsen
	Group Art Unit	1761
	Express Mail Label No.	

This is a request for a continuation or divisional application under 37 CFR 1.53 (d), (continued prosecution application (CPA)) of prior application number 09/511,780, filed on February 23, 2000, entitled CREAM-BASED FOOD COMPOSITION AND PROCESS OF MANUFACTURE.

NOTES

FILING QUALIFICATIONS: The prior application identified above must be a nonprovisional application that is either: (1) complete as defined by 37 CFR 1.51(b), or (2) the national stage of an international application in compliance with 35 U.S.C. 371. Effective May 29, 2000, a CPA may only be filed in a utility or a plant application if the prior nonprovisional application was filed before May 29, 2000. A CPA may be filed in a design application regardless of the filing date of the prior application. See "Request for Continued Examination Practice changes to and Provisional Application Practice," Final Rule, 65 Fed. Reg. 50092 (Aug. 16, 2000); Interim Rule, 65 Fed. Reg. 14865 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office (Apr. 11, 2000).

C-I-P NOT PERMITTED: A continuation-in-part application cannot be filed as a CPA under 37 CFR 1.53(d), but must be filed under 37 CFR 1.53(b).

EXPRESS ABANDONMENT OF PRIOR APPLICATION: The filing of this CPA is a request to expressly abandon the prior application as of the filing date of the request for a CPA. 37 CFR 1.53(b) must be used to file a continuation, divisional, or continuation-in-part of an application that is not to be abandoned.

ACCESS TO PRIOR APPLICATION: The filing of this CPA will be construed to include a waiver of confidentiality by the applicant under 35 U.S.C. 122 to the extent that any member of the public who is entitled under the provisions of 37 CFR 1.14 to access to, copies of, or information concerning, the prior application may be given similar access to, copies of, or similar information concerning, the other application or applications in the file jacket.

35 U.S.C. 120 STATEMENT: In a CPA, no reference to the prior application is needed in the first sentence of the specification and none should be submitted. If a sentence referencing the prior application is submitted, it will not be entered. A request for a CPA is the specific reference required by 35 U.S.C. 120 and to every application assigned the application number identified in such request, 37 CFR 1.78(a).

1. Enter the unentered amendment previously filed on under 37 CFR 1.116 in the prior nonprovisional application.
2. A preliminary amendment is enclosed.
3. This application is filed by fewer than all the inventors named in the prior application, 37 CFR 1.53 (d)(4).
 - a. **DELETE** the following inventor(s) named in the prior nonprovisional application:
 - b. The inventor(s) to be deleted are set forth on a separate sheet attached hereto.
4. A new power of attorney or authorization of agent (PTO/SB/81) is enclosed.
5. Information Disclosure Statement (IDS) is enclosed:
 - a. PTO-1449
 - b. Copies of IDS Citations

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MAY 23 2002

TC 1700

CLAIMS	(1) FOR	(2) NUMBER FILED	(3) NUMBER EXTRA	(4) RATE	(5) CALCULATIONS
	TOTAL CLAIMS (37 CFR 1.16(c))	20 =	0	\$ 18.00	=\$ 00.00
	INDEPENDENT CLAIMS (37 CFR 1.16(b))	2 =	0	\$ 84.00	= 00.00
	MULTIPLE DEPENDENT CLAIMS (if applicable) (37 CFR 1.16(d))			\$280	
		0		BASIC FEE (37 CFR 1.16(a))	740.00
				Total of above Calculations =	740.00
				Reduction by 50% for filing by small entity (Note 37 CFR 1.9, 1.27, 1.28).	-
				TOTAL =	\$ 740.00

6. Small entity status:

- a. A small entity statement is enclosed.
- b. A small entity statement was filed in the prior application and such status is still proper and desired.
- c. Is no longer claimed

7. A petition for extension of time is enclosed.8. The Commissioner is hereby authorized to credit overpayments or charge fees to Deposit Account No. 501-814:

- a. Fees required under 37 CFR 1.16.
- b. Fees required under 37 CFR 1.17.
- c. Fees required under 37 CFR 1.18.
- d. Fees required under 37 CFR 1.136, if any.

9. A check in the amount of \$ _____ is enclosed.10. Applicant requests suspension of action under 37 CFR 1.103(b) for a period of _____ months (not to exceed 3 months) and the fee under 37 CFR 1.17(i) is enclosed.11. New Attorney Docket Number, if desired*[Prior application Attorney Docket Number will carryover to this CPA unless a new Attorney Docket Number has been provided herein.]*

- a. Receipt For Facsimile Transmitted CPA (PTO/SB/29A)
- b. Return Receipt Postcard (Should be specifically itemized, See MPEP 503)

13. Other:

14. NEW CORRESPONDENCE ADDRESS					
<input checked="" type="checkbox"/> Customer Number or Bar Code Label		28765		<input type="checkbox"/> New correspondence address below	
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ADDRESS					
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COUNTRY			TELEPHONE		FAX

15. SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

WINSTON & STRAWN

NAME	Allen A. Fanucci	REG. NO. 30,256
SIGNATURE	<i>Jeffrey A. Wolfe (42, 234)</i>	
DATE	May 20, 2002	

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re application of: J. BAENSCH et al.

Application No.: 09/511,780

Filing Date: February 23, 2000

For: CREAM-BASED FOOD COMPOSITION
AND PROCESS OF MANUFACTURE

Group Art Unit: 1761

Examiner: R. Madsen

Attorney Docket No.: 88265-305

PRELIMINARY AMENDMENT

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Box CPA

MAY 23 2002

Assistant Commissioner of Patents
Washington, D.C. 20231

TC 1700

Sir:

Applicants request entry of the following amendments and comments into the file of this application, prior to examination on the merits.

IN THE SPECIFICATION

Please amend the paragraph at page 10, line 16 as follows:

The food composition has an A_w of 0.88 and contains living lactic acid bacteria at a concentration of 5×10^7 per gram of the food composition. After being chilled for 45 days, the food composition still contains living lactic acid bacteria at a concentration of over 10^6 per gram of the food composition.

IN THE CLAIMS

Please cancel claim 37, without prejudice, and amend the remaining claims as follows:

26. (Amended) A cream composition comprising a mixture of:
10% to 20% of a milk derivative;
8% to 30% of a sugar;
10% to 60% of a fermented dairy product;
0.01% to 35% of a texturizing agent;